

December 30, 2003

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

400 Yesler Way, Room 404
Seattle, Washington 98104
Telephone (206) 296-4660
Facsimile (206) 296-1654

REPORT AND DECISION

SUBJECT: Department of Development and Environmental Services File No. **L03P0011**
Proposed Ordinance no. **2003-0484**

VEENHUIZEN
Preliminary Plat Application

Location: South of SR 169 (Maple Valley Highway) and west of 149th Avenue
Southeast (if extended)

Applicant: **Rick Lennon**
Lennon Investments
35815 Southeast David Powell Road
Fall City, Washington 98024

King County: Department of Development and Environmental Services
represented by **Kim Claussen**
900 Oakesdale Avenue Southwest
Renton, Washington 98055-1219
Telephone: (206) 296-7167
Facsimile: (206) 296-6728

SUMMARY OF DECISION/RECOMMENDATION:

| | |
|--|--|
| Department's Preliminary Recommendation: | Approve, subject to conditions |
| Department's Final Recommendation: | Approve, subject to conditions (modified) |
| Examiner's Decision: | Approved, subject to conditions (modified) |

EXAMINER PROCEEDINGS:

| | |
|-----------------|-------------------|
| Hearing Opened: | December 16, 2003 |
| Hearing Closed: | December 16, 2003 |

ISSUES/TOPICS ADDRESSED

- | | |
|-------------------------|--------------------------------|
| • Recreation space | • Subdivision access |
| • Stream classification | • Geotechnical recommendations |

SUMMARY: The proposed subdivision of 74 lots in the urban area is approved, subject to conditions.

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS OF FACT:

1. General Information:

- | | |
|----------------------------|---|
| Developer: | Rick Lennon Lennon Investments 35815 SE David Powell Road Fall City, WA 98024 (206) 399-3775 |
| Engineer: | ESM Consulting Engineers 708 South 348 th Street Federal Way WA 98003 |
| STR: | 22-23-05 |
| Location: | The site is located south of SR-169 (Maple Valley Highway), west of 149 th Avenue SE (if extended) |
| Zoning: | R-6 |
| Acreage: | 27.74 acres |
| Number of Lots: | 74 lots |
| Density: | Approximately 2.3 units per acre |
| Lot Size: | Approximately 5,000 square feet |
| Proposed Use: | Single-family detached dwellings |
| Sewage Disposal: | Cedar River Water & Sewer District |
| Water Supply: | Cedar River Water & Sewer District |
| Fire District: | King County Fire District No. 25 |
| School District: | Renton School District |
| Complete Application Date: | April 30, 2003 |
2. Except as modified herein, the facts set forth in the King County Land Use Services Division's preliminary report to the King County Hearing Examiner for the December 16, 2003 public hearing are found to be correct, and are incorporated herein by reference. Said report is exhibit no. 2 in the hearing record.
3. The proposed subdivision of 74 lots is required to provide a minimum of 28,860 square feet of recreation area on site. The proposed plat provides a total of 24,031 square feet in tracts C, D and F as presently designed. Some revisions to tract F are required to meet the design standards of King County Code Sections 21A.14.180 and .190.

An existing King County trail lies on the north side of SR 169. DDES, the Department of Parks and the Applicant concur that it would be in the interest of King County to permit the Applicant to pay a fee in lieu of open space for the purpose of improving the county trail, based upon the number of square feet that the proposed plat is deficient in providing on site recreation area.

4. The City of Renton requested that the proposed development be consistent with city standards, as the subject property is within the potential annexation area of the city. The Applicant testified that the Renton standard of greatest concern is that there be not fewer than 2 access points for the plat. However, King County Road Standards do not require a second access for a development of this size, and the State of Washington Department of Transportation would not approve two access points on SR 169. There is no other available access to the development.
5. The Applicant has presented substantial evidence that the on site stream is intermittent, and has no hydrological connection to the Cedar River or other salmonid-bearing waterway. Due to the intermittent nature of the stream and lack of salmonid presence, the on-site reach of this stream is a Class 3 stream pursuant to KCC 21A.06.1240. A class 3 stream requires a 25 foot buffer measured from the ordinary high water mark, plus a 15 foot building set back line measured from the edge of the buffer. Although DDES questioned the description and characterization of the stream, no substantial evidence was presented that contradicts the reports provided by the Applicant's environmental consultant.
6. The Applicant's geotechnical consultant, in its reports submitted for the purpose of describing and evaluating the suitability of the property for development, made recommendations for site development, particularly including requirements for dewatering excavations below stated depths, and for site work to properly support roads and foundations.
7. Traffic studies provided in support of the proposed development include a recommendation for a right turn pocket or taper for east-bound traffic entering the proposed development from SR 169. Implementation of this recommendation is necessary to mitigate impacts to the traffic flow on SR 169 and for the safety of vehicles slowing to enter the property.

CONCLUSIONS:

1. If approved subject to the conditions recommended below, the proposed subdivision will comply with the goals and objectives of the King County Comprehensive Plan, subdivision and zoning codes, and other official land use controls and policies of King County.
2. If approved subject to the conditions recommended below, this proposed subdivision will make appropriate provision for the public health, safety and general welfare and for open spaces for drainage ways, streets, other public ways, transit stops, potable water supply, sanitary waste, parks and recreations, playgrounds, schools and school grounds and safe walking conditions for students who only walk to school; and it will serve the public use and interest.
3. The conditions for final plat approval recommended below are in the public interest and are reasonable requirements to mitigate the impacts of the development upon the environment.
4. The dedications of land or easements within and adjacent to the proposed plat, as required for final plat approval or as shown on the proposed preliminary plat submitted by the Applicant on July 30, 2003, are reasonable and necessary as a direct result of the development of this proposed plat, and are proportionate to the impacts of the development.

5. Payment of a fee in lieu of additional on-site recreation space, to be used for the improvement of the King County trail on the north side of SR 169, will be of greater benefit to the prospective residents of the proposed development than additional on-site recreation area, provided that not less than 24,031 square feet of recreation space is provided on-site, consistent with the standards of KCC 21A.14.180 and 190. Revisions to tract F are required to meet the county standards for recreation space design and provide a pedestrian walkway to SR 169.
6. The stream that emerges on-site and continues to the west boundary of the proposed development, as described in the reports of B-Twelve Associates (exhibits 14 and 20) is a Class 3 (intermittent) stream, that requires a 25 foot buffer and a 15 foot building setback line from the edge of the buffer.
7. Development of the site should be required to be consistent with recommendations of the Applicant's geotechnical consultants, contained in the report by Terra Associates, Inc. dated December 11, 2002 (exhibit 11), and such additional recommendations as may be made by the geotechnical consultant based upon on-site observation and analysis during site development and construction.
8. A right turn deceleration lane, consistent with King County and Washington Department of Transportation design standards, should be established on the south side of SR 169, approaching the access road to the development.

DECISION:

The proposed plat of Veenhuizen, as revised and received October 31, 2003, is granted preliminary APPROVAL, subject to the following conditions of final approval:

1. Compliance with all platting provisions of Title 19A of the King County Code.
2. All persons having an ownership interest in the subject property shall sign on the face of the final plat a dedication which includes the language set forth in King County Council Motion No. 5952.
3. The plat shall comply with the base density and minimum density requirements of the R-6 zone classification. All lots shall meet the minimum dimensional requirements of the R-6 zone classification or shall be as shown on the face of the approved preliminary plat, whichever is larger, except that minor revisions to the plat which do not result in substantial changes may be approved at the discretion of the Department of Development and Environmental Services.
4. All construction and upgrading of public and private roads shall be done in accordance with the King County Road Standards established and adopted by Ordinance No. 11187, as amended (1993 KCRS), as may be modified to meet requirements of the State of Washington Department of Transportation for improvement to SR 169.
5. The applicant must obtain the approval of the King County Fire Protection Engineer for the adequacy of the fire hydrant, water main, and fire flow standards of Chapter 17.08 of the King County Code.
6. Final plat approval shall require full compliance with the drainage provisions set forth in King County Code 9.04. Compliance may result in reducing the number and/or location of lots as

shown on the preliminary approved plat. Preliminary review has identified the following

conditions of approval, which represent portions of the drainage requirements. All other applicable requirements in KCC 9.04 and the Surface Water Design Manual (SWDM) must also be satisfied during engineering and final review.

- a. Drainage plans and analysis shall comply with the 1998 King County Surface Water Design Manual and applicable updates adopted by King County. DDES approval of the drainage and roadway plans is required prior to any construction.
 - b. Current standard plan notes and ESC notes, as established by DDES Engineering Review, shall be shown on the engineering plans.
 - c. The following note shall be shown on the final recorded plat:

All building downspouts, footing drains, and drains from all impervious surfaces such as patios and driveways shall be connected to the permanent storm drain outlet as shown on the approved construction drawings # _____ on file with DDES and/or the King County Department of Transportation. This plan shall be submitted with the application of any building permit. All connections of the drains must be constructed and approved prior to the final building inspection approval. For those lots that are designated for individual lot infiltration systems, the systems shall be constructed at the time of the building permit and shall comply with plans on file."
7. The stormwater detention facilities shall be designed to the Level 2 flow control and basic water quality requirements per the 1998 King County Surface Water Design Manual (KCSWDM).
 8. OFFSITE DRAINAGE: An existing 12-inch offsite drainage culvert under the Burlington Northern R/W (points B to C in Level 1 Analysis) shall be upgraded as proposed in the Addendum to the Level 1 Analysis received September 19, 2003. Approval from the City of Renton is required to upgrade the culvert.
 9. The 100-year floodplain for all onsite streams and wetlands shall be shown on the engineering plans and the final plat per Special Requirement #2 in the KCSWDM. Note that a floodplain analysis was received September 19, 2003.
 10. The following road improvements are required to be constructed according to 1993 King County Road Standards(KCRS):
 - a. Roads A, B, C, and D shall be improved at a minimum to the urban subaccess street standard. The entrance section of Road A(from Road D to SR 169) shall be improved at a minimum to the urban subcollector standard. This entry section shall be improved in general conformance with the conceptual drainage/utility plan received September 19, 2003, including provisions for a right turn lane. The proposed improvements and access to SR 169 are subject to state approval.
 - b. Tract F shall be improved per the KCRS to include paved pedestrian walkway to SR 169.
 - c. A right turn deceleration lane is required for eastbound traffic entering the site from SR 169, subject to state approval.

- d. A new sidewalk connection is required on SR 169 from the Tract F onsite walkway to the existing sidewalk on SR 169 approximately 50 feet east of the northeast corner of the site. This improvement is also subject to state approval.
 - e. Tracts E, H and I shall be improved as joint use driveways per Section 3.01 of the KCRS. Notes regarding the ownership and maintenance of the joint use driveway tracts shall be shown on the engineering plans and final plat.
 - f. Tract G shall be improved as a private access tract per Section 2.09 of the KCRS. Notes regarding the ownership and maintenance of the tract shall be shown on the engineering plans and final plat.
 - g. Modifications to the above road conditions may be considered in accordance with the variance provisions in Section 1.08 of the KCRS.
- 11. All utilities within proposed rights-of-way must be included within a franchise approved by the King County Council prior to final plat recording.
 - 12. The applicant or subsequent owner shall comply with King County Code 14.75, Mitigation Payment System (MPS), by paying the required MPS fee and administration fee as determined by the applicable fee ordinance. The applicant has the option to either: (1) pay the MPS fee at final plat recording, or (2) pay the MPS fee at the time of building permit issuance. If the first option is chosen, the fee paid shall be the fee in effect at the time of plat application and a note shall be placed on the face of the plat that reads, "All fees required by King County Code 14.75, Mitigation Payment System (MPS), have been paid." If the second option is chosen, the fee paid shall be the amount in effect as of the date of building permit application.
 - 13. Lots within this subdivision are subject to King County Code 21A.43, which imposes impact fees to fund school system improvements needed to serve new development. As a condition of final approval, fifty percent (50%) of the impact fees due for the plat shall be assessed and collected immediately prior to recording, using the fee schedules in effect when the plat receives final approval. The balance of the assessed fee shall be allocated evenly to the dwelling units in the plat and shall be collected prior to building permit issuance.
 - 14. The proposed subdivision shall comply with the Sensitive Areas Code as outlined in KCC 21A.24. Permanent survey marking, and signs as specified in KCC 21A.24.160 shall also be addressed prior to final plat approval. Temporary marking of sensitive areas and their buffers (e.g., with bright orange construction fencing) shall be placed on the site and shall remain in place until all construction activities are completed.
 - 15. Preliminary plat review has identified the following specific requirements which apply to this project. All other applicable requirements from KCC 21A.24 shall also be addressed by the applicant.

Wetlands

- a. Class 2 wetland(s) shall have a minimum buffer of 50 feet, measured from the wetland edge.
- b. The wetland(s) and their respective buffers shall be placed in a Sensitive Area Tract

- c. Buffer averaging may be proposed, pursuant to KCC 21A.24.320, provided the total amount of the buffer area is not reduced and better resource protection is achieved, subject to review and approval by a DDES Senior Ecologist.
- d. A minimum building setback line of 15 feet shall be required from the edge of the SATs.

Streams

- e. The Class 3 stream on the site shall have a minimum 25-foot buffer, measured from the ordinary high water mark (OHWM).
- f. The stream(s) and their respective buffers shall be placed in a Sensitive Area Tract (SAT).
- g. A minimum building setback line of 15 feet shall be required from the edge of the tract.

Alterations to Streams or Wetlands

- h. If alterations of streams and/or wetlands are approved in conformance with KCC 21A.24, then a detailed plan to mitigate for impacts from that alteration will be required to be reviewed and approved along with the plat engineering plans. A performance bond or other financial guarantee will be required at the time of plan approval, to guarantee that the mitigation measures are installed according to the plan. Once the mitigation work is completed to a DDES Senior Ecologist's satisfaction, the performance bond may be replaced by a maintenance bond for the remainder of the five-year monitoring period to guarantee the success of the mitigation. The applicant shall be responsible for the installation, maintenance and monitoring of any approved mitigation. The mitigation plan must be installed prior to final inspection of the plat.

Geotechnical

- i. Determine the top, toe, and sides of 40% slopes by field survey. Provide a 50-foot buffer from these slopes.
- j. The applicant shall delineate all on-site erosion hazard areas on the final engineering plans (erosion hazard areas are defined in KCC 21A.06.415). The delineation of such areas shall be approved by a DDES geologist. The requirements found in KCC 21A.24.220 concerning erosion hazard areas shall be met, including seasonal restrictions on clearing and grading activities.
- k. Site development shall be consistent with the geotechnical recs in the report dated December 11, 2002 (exhibit no. 11), and any modifications and additional recs made by the applicant's geotechnical consultant based upon on-site observation and analysis during site development and construction.
- l. The following note shall be shown on the final engineering plan and recorded plat:

RESTRICTIONS FOR SENSITIVE AREA TRACTS AND SENSITIVE AREAS AND BUFFERS

Dedication of a sensitive area tract/sensitive area and buffer conveys to the public a beneficial interest in the land within the tract/sensitive area and buffer. This interest includes the

preservation of native vegetation for all purposes that benefit the public health, safety and

welfare, including control of surface water and erosion, maintenance of slope stability, and protection of plant and animal habitat. The sensitive area tract/sensitive area and buffer imposes upon all present and future owners and occupiers of the land subject to the tract/sensitive area and buffer the obligation, enforceable on behalf of the public by King County, to leave undisturbed all trees and other vegetation within the tract/sensitive area and buffer. The vegetation within the tract/sensitive area and buffer may not be cut, pruned, covered by fill, removed or damaged without approval in writing from the King County Department of Development and Environmental Services or its successor agency, unless otherwise provided by law.

The common boundary between the tract/sensitive area and buffer and the area of development activity must be marked or otherwise flagged to the satisfaction of King County prior to any clearing, grading, building construction or other development activity on a lot subject to the sensitive area tract/sensitive area and buffer. The required marking or flagging shall remain in place until all development proposal activities in the vicinity of the sensitive area are completed.

No building foundations are allowed beyond the required 15-foot building setback line, unless otherwise provided by law.

16. Suitable recreation space and improvements, and a fee in lieu of open space, shall be provided consistent with the requirements of KCC 21A.14.180 and KCC 21A.14.190 (i.e., sport court, children's play equipment, picnic tables, benches, etc.). A minimum of 24, 031 square feet shall be provided on site.
 - a. An overall detailed recreation space plan shall be submitted for review and approval by DDES, prior to or concurrent with the engineering plans. This plan shall include location, area calculations (minimum of 24, 031 square feet), dimensions, landscape specs and equipment specs.
 - b. A fee in lieu of shall be paid for the balance of the recreation space not provided on-site. This shall be paid prior to final approval/recording.
 - c. A performance bond for recreation space improvements shall be posted prior to recording of the plat.
17. A homeowners' association or other workable organization shall be established to the satisfaction of DDES which provides for the ownership and continued maintenance of the recreation, open space and/or sensitive area tract(s).
18. Street trees shall be provided as follows (per KCRS 5.03 and KCC 21A.16.050):
 - a. Trees shall be planted at a rate of one tree for every 40 feet of frontage along all roads. Spacing may be modified to accommodate sight distance requirements for driveways and intersections. Street Tree plan along SR-169 shall also be reviewed by Washington State Dept. of Transportation.
 - b. Trees shall be located within the street right-of-way and planted in accordance with Drawing No. 5-009 of the 1993 King County Road Standards, unless King County Department of Transportation determines that trees should not be located in the street

right-of-way.

- c. If King County determines that the required street trees should not be located within the right-of-way, they shall be located no more than 20 feet from the street right-of-way line.
- d. The trees shall be owned and maintained by the abutting lot owners *or* the homeowners association or other workable organization unless the County has adopted a maintenance program. Ownership and maintenance shall be noted on the face of the final recorded plat.
- e. The species of trees shall be approved by DDES if located within the right-of-way, and shall not include poplar, cottonwood, soft maples, gum, any fruit-bearing trees, or any other tree or shrub whose roots are likely to obstruct sanitary or storm sewers, or that is not compatible with overhead utility lines.
- f. The applicant shall submit a street tree plan and bond quantity sheet for review and approval by DDES prior to engineering plan approval.
- g. The applicant shall contact Metro Service Planning at 684-1622 to determine if SR-169 is on a bus route. If so, the street tree plan shall also be reviewed by Metro.
- h. The street trees must be installed and inspected, or a performance bond posted prior to recording of the plat. If a performance bond is posted, the street trees must be installed and inspected within one year of recording of the plat. At the time of inspection, if the trees are found to be installed per the approved plan, a maintenance bond must be submitted or the performance bond replaced with a maintenance bond, and held for one year. After one year, the maintenance bond may be released after DDES has completed a second inspection and determined that the trees have been kept healthy and thriving.

ORDERED this 30th day of December, 2003

James N. O'Connor
Protom Hearing Examiner

TRANSMITTED this 30th day of December, 2003, to the following parties and interested persons:

Bob Eichler
3455 Hunts Point Rd
Bellevue WA 98004-1117

EMS Consulting Engineers
Attn: Phil Kitzes
720 S. 346th St.
Federal Way WA 98003

John Graves
Lozier Homes
1203 114th Ave. SE
Bellevue WA 98004

Rick & Traci Heinz
15462 141st Pl. SE
Renton WA 98058

Rick Lennon
Lennon Investments
35815 SE David Powell Rd
Fall City WA 98024

Rebecca Lind
City of Renton, EDNSP
1055 S. Grady Way
Renton WA 98055

P. Nilles
POB 1170
Renton WA 98057

Kevin Oleson
Renton School Dist. Trans.
1220 N 4th St.
Renton WA 98055

John & Sherry Rosenlund
15750 142nd Pl. SE
Renton WA 98058

Betty Saffle
15281 Oak Dr
Renton WA 98058

Seattle KC Health Dept.
E. Dist. Environ. Health
14350 SE Eastgate Way
Bellevue WA 98007

Ruth Veenhuizen
14615 SE Renton-Maple Valley Rd.
Renton WA 98058

Gregg Zimmerman
City of Renton-Planning
1055 S Grady Way
Renton WA 98055

Greg Borba
DDES/LUSD
MS OAK-DE-0100

Kim Claussen
DDES/LUSD
Current Planning
MS OAK-DE-0100

Nick Gillen
Wetland Review
DDES/SDSS
MS OAK-DE-0100

Kristen Langley
DDES/LUSD
Land Use Traffic
MS OAK-DE-0100

Carol Rogers
LUSD/CPLN
MS OAK-DE-0100

Steve Townsend
DDES/LUSD
Land Use Inspections
MS OAK-DE-0100

Larry West
DDES/LUSD
Geo Review
MS OAK-DE-0100

Bruce Whittaker
DDES/LUSD
Prel. Review Engineer
MS OAK-DE-0100

NOTICE OF RIGHT TO APPEAL

In order to appeal the decision of the Examiner, written notice of appeal must be filed with the Clerk of the King County Council with a fee of \$250.00 (check payable to King County Office of Finance) ***on or before January 12, 2004***. If a notice of appeal is filed, the original and six (6) copies of a written appeal statement specifying the basis for the appeal and argument in support of the appeal must be filed with the Clerk of the King County Council ***on or before January 19, 2004***. Appeal statements may refer only to facts contained in the hearing record; new facts may not be presented on appeal.

Filing requires actual delivery to the Office of the Clerk of the Council, Room 1025, King County Courthouse, 516 3rd Avenue, Seattle, Washington 98104, prior to the close of business (4:30 p.m.) on the date due. Prior mailing is not sufficient if actual receipt by the Clerk does not occur within the applicable time period. The Examiner does not have authority to extend the time period unless the Office of the Clerk is not open on the specified closing date, in which event delivery prior to the close of business on the next business day is sufficient to meet the filing requirement.

If a written notice of appeal and filing fee are not filed within fourteen (14) calendar days of the date of this report, or if a written appeal statement and argument are not filed within twenty-one (21) calendar days of the date of this report, the decision of the hearing examiner contained herein shall be the final decision of King County without the need for further action by the Council.

MINUTES OF THE DECEMBER 16, 2003, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. L03P0011.

James N. O'Connor was the Hearing Examiner in this matter. Participating in the hearing were Kim Claussen and Bruce Whittaker, representing the Department; and Robert D. Johns, representing the Appellant, and Phil Kitzes.

The following exhibits were offered and entered into the record:

Exhibit No. 1 DDES File No. L03P0011

Exhibit No. 2 DDES Preliminary Report dated December 16, 2003

- Exhibit No. 3 Application dated April 30, 2003
- Exhibit No. 4 Environmental Checklist received April 30, 2003
- Exhibit No. 5 Declaration of Non-Significance dated October 24, 2003
- Exhibit No. 6 Affidavit of Posting indicating June 10, 2003 as date of posting and June 12, 2003
As the date the affidavit was received by DDES
- Exhibit No. 7 Plat Map received October 31, 2003 (Revision)
- Exhibit No. 8 Land Use Map
- Exhibit No. 9 Assessors Maps, 22-23-05
- Exhibit No. 10 Revised Recommendations
- Exhibit No. 11 Geotech Report by Terra dated December 11, 2002 (received July 18, 2003)
- Exhibit No. 12 Traffic Study dated April 30, 2003
- Exhibit No. 13 Traffic Study (Revised) dated July 16, 2003
- Exhibit No. 14 Wetland Study by B-twelve dated April 29, 2003
- Exhibit No. 15 Supplemental Geotech Study by Terra dated September 18, 2003
- Exhibit No. 16 Level 1 Drainage Analysis by ESM dated April 2003
- Exhibit No. 17 Revised Level 1 Drainage Analysis by ESM dated April 2003
- Exhibit No. 18 Floodplain Analysis dated September 2003
- Exhibit No. 19 Sight Distance by ESD received July 18, 2003
- Exhibit No. 20 Addendum Wetland & Stream Report by B-twelve dated July 9, 2003
- Exhibit No. 21 Right & Left Turn Exhibits received July 18, 2003
- Exhibit No. 22 Letter from City of Renton dated October 21, 2003
- Exhibit No. 23 Email from City of Renton, Floodplain dated September 26, 2003

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